

105TH CONGRESS
2D SESSION

H. R. 3669

To authorize the Secretary of the Interior to provide funding for the implementation of the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 1998

Mr. McINNIS introduced the following bill; which was referred to the
Committee on Resources

A BILL

To authorize the Secretary of the Interior to provide funding for the implementation of the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Upper Colorado River
5 and San Juan River Endangered Fish Recovery Act of
6 1998”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to authorize and provide
3 funding for the Secretary, acting through the Bureau of
4 Reclamation and the Bureau of Indian Affairs, to continue
5 implementation of the endangered fish recovery implemen-
6 tation programs for the Upper Colorado and San Juan
7 River Basins in order to accomplish the objectives of these
8 programs within a currently established time schedule.

9 **SEC. 3. DEFINITIONS.**

10 As used in this Act:

11 (1) The term “Recovery Implementation Pro-
12 grams” means the intergovernmental programs es-
13 tablished pursuant to the 1988 Cooperative Agree-
14 ment to implement the Recovery Implementation
15 Program for the Endangered Fish Species in the
16 Upper Colorado River dated September 29, 1987,
17 and the 1992 Cooperative Agreement to implement
18 the San Juan River Recovery Implementation Pro-
19 gram dated October 21, 1992, and as they may be
20 amended by the parties thereto.

21 (2) The term “Secretary” means the Secretary
22 of the Interior.

23 (3) The term “Upper Division States” means
24 the States of Colorado, New Mexico, Utah, and Wy-
25 oming.

1 (4) The term “Endangered Species Act” means
2 the Endangered Species Act of 1973 (16 U.S.C.
3 1531 et seq.) and any Federal regulation implement-
4 ing the Endangered Species Act.

5 (5) The term “Reclamation” means the Bureau
6 of Reclamation.

7 (6) The term “Service” means the United
8 States Fish and Wildlife Service.

9 (7) The term “Indian Affairs” means the Bu-
10 reau of Indian Affairs.

11 (8) The term “capital projects” means plan-
12 ning, design, permitting or other compliance, con-
13 struction, construction management, and replace-
14 ment of facilities, and the acquisition of interests in
15 land or water, as necessary to carry out the Recov-
16 ery Implementation Programs.

17 (9) The term “facilities” includes facilities for
18 the genetic conservation or propagation of the en-
19 dangered fishes, those for the restoration of flood-
20 plain habitat or fish passage, those for regulation or
21 supply of instream flows, and those for the removal
22 or translocation of nonnative fishes.

23 (10) The term “interests in land and water” in-
24 cludes long-term leases and easements, and long-

1 term enforcement or other agreements protecting
2 instream flows.

3 (11) The term “base funding” means funding
4 for operation and maintenance of capital projects,
5 implementation of recovery actions other than cap-
6 ital projects, monitoring and research to evaluate the
7 need for or effectiveness of any recovery action, and
8 program management, as necessary to carry out the
9 Recovery Implementation Programs. The term in-
10 cludes annual funding provided under the terms of
11 the 1988 Cooperative Agreement and the 1992 Co-
12 operative Agreement.

13 (12) The term “recovery actions other than
14 capital projects” includes short-term leases and
15 agreements for interests in land, water, and facili-
16 ties; the reintroduction or augmentation of endan-
17 gered fish stocks; and the removal, translocation, or
18 other control of nonnative fishes.

19 **SEC. 4. AUTHORIZATION TO FUND RECOVERY PROGRAMS.**

20 (a) **COST OF CAPITAL PROJECTS.**—(1) The costs of
21 the capital projects undertaken for the Recovery Imple-
22 mentation Programs shall not exceed \$100,000,000 of
23 which—

24 (A) costs for the Recovery Implementation Pro-
25 gram for Endangered Fish Species in the Upper

1 Colorado River Basin through 2005 shall not exceed
2 \$82,000,000; and

3 (B) costs for the San Juan River Recovery Im-
4 plementation Program through 2007 shall not ex-
5 ceed \$18,000,000.

6 (2) These costs will be adjusted for inflation.

7 (b) AUTHORIZATION OF APPROPRIATIONS FOR FED-
8 ERAL PARTICIPATION IN CAPITAL PROJECTS.—(1) There
9 is hereby authorized to be appropriated to the Secretary,
10 acting through Reclamation, \$46,000,000 to undertake
11 capital projects pursuant to this Act. Such funds shall be
12 considered a nonreimbursable Federal expenditure.

13 (2) The authority of the Secretary to request appro-
14 priations to implement capital projects for the Recovery
15 Implementation Program for Endangered Fish Species in
16 the Upper Colorado River Basin shall expire in 2005 un-
17 less reauthorized by an Act of Congress.

18 (3) The authority of the Secretary to request appro-
19 priations to implement the capital projects for the San
20 Juan River Basin Recovery Implementation Program shall
21 expire in 2007 unless reauthorized by an Act of Congress.

22 (c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL
23 PROJECTS.—(1) The Secretary, acting through Reclama-
24 tion, may enter into agreements with the Upper Division
25 States, political subdivisions, or organizations within the

1 Upper Division States which contribute to the payment
2 of capital project costs. Such non-Federal contributions
3 shall not exceed \$17,000,000.

4 (2) In addition to the contribution described in para-
5 graph (1), the Secretary may utilize power revenues col-
6 lected pursuant to the Colorado River Storage Project Act
7 to carry out the purposes of this Act. Such funds shall
8 be treated as reimbursable costs assigned to power for re-
9 payment under section 5 of the Colorado River Storage
10 Project Act. This additional contribution shall not exceed
11 \$17,000,000. Such funds shall be considered a non-Fed-
12 eral contribution for the purposes of this Act. The addi-
13 tional funding provided pursuant to this provision may be
14 provided through a loan or loans from the Colorado Water
15 Conservation Board Construction Fund (37–60–121
16 C.R.S.) to the Secretary of Energy to replace revenues
17 which would otherwise be used for project repayments.
18 The Secretary is authorized to repay such loan or loans
19 from power revenues, subject to an agreement between the
20 Colorado Water Conservation Board and the Secretary of
21 Energy. The agreement shall include provisions designed
22 to minimize future increases in electrical power rates and
23 ensure that a lump sum repayment, which includes prin-
24 cipal and interest, is paid to the Colorado Water Conserva-
25 tion Board no later than October 31, 2057.

1 (3) All contributions made pursuant to paragraphs
2 (1) and (2) shall be in addition to the cost of replacement
3 power purchased due to modifying the operation of the
4 Colorado River Storage Project and the capital cost of
5 water from Woford Mountain Reservoir in Colorado. Such
6 costs shall be considered as non-Federal contributions, not
7 to exceed \$20,000,000.

8 (d) BASE FUNDING.—(1) The Secretary may utilize
9 power revenues collected pursuant to the Colorado River
10 Storage Project Act for the annual base funding contribu-
11 tions to the Recovery Implementation Programs by Rec-
12 lamation. Such funding will be treated as being non-
13 reimbursable and as having been repaid and returned to
14 the general fund of the Department of the Treasury as
15 costs assigned to power for repayment under section 5 of
16 the Colorado River Storage Project Act.

17 (2) For the Recovery Implementation Program for
18 the endangered fish species in the Upper Colorado River
19 Basin, such contributions shall not exceed \$4,000,000 per
20 year.

21 (3) For the San Juan River Recovery Implementation
22 Program, such contributions shall not exceed \$2,000,000
23 per year.

24 (4) These limits on the annual contributions to base
25 funding will be adjusted for inflation. Any transfer of

1 funds within these limits to the Service shall not be subject
2 to transfer fees. No later than December 31, 2010, the
3 Secretary shall submit a report on the utilization of power
4 revenues to the Subcommittees on Energy and Water De-
5 velopment for the Senate and the Committee on Appro-
6 priations of the House of Representatives. The Secretary
7 shall also make a recommendation regarding the need for
8 additional funding that may be required to fulfill the goals
9 of the Recovery Implementation Programs. Nothing in
10 this Act shall otherwise modify or amend existing agree-
11 ments among participants regarding base funding and de-
12 pletion fees for the Recovery Implementation Programs.
13 The Secretary of Energy and Reclamation shall maintain
14 sufficient revenues in the Colorado River Basin Fund to
15 meet their obligations to provide base funding in accord-
16 ance with this provision.

17 (e) AUTHORITY TO RETAIN APPROPRIATED
18 FUNDS.—At the end of each fiscal year, any unexpended
19 appropriated funds for capital projects shall be retained
20 for use in future fiscal years. Unexpended funds which are
21 carried over shall continue to be used to implement the
22 capital projects needed for the Recovery Implementation
23 Programs.

24 (f) ADDITIONAL AUTHORITY.—The Secretary may
25 enter into agreements and contracts with Federal and

1 non-Federal entities; acquire and transfer interests in
2 land, water, and facilities; and accept or give grants in
3 order to carry out the purposes of this Act.

4 (g) INDIAN TRUST ASSETS.—As much of the poten-
5 tial water development in the San Juan River Basin is
6 for the benefit of Indian tribes and most of the federally
7 designated critical habitat for the endangered fish species
8 in the Basin is on Indian trust lands, nothing in this Act
9 shall be construed to restrict the Secretary, acting through
10 Reclamation and Indian Affairs, from funding activities
11 or capital projects in accordance with the Federal Govern-
12 ment’s Indian trust responsibility.

13 **SEC. 5. EFFECT ON RECLAMATION LAW.**

14 Construction of facilities and acquisition of land and
15 water interests as contemplated herein shall not render
16 these facilities or land and water interests or associated
17 processes and procedures subject to the Reclamation Act
18 of 1902, as amended.

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